

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR RULE INITIATION**

AGENDA # II.B.2.

AGENDA ITEM SUMMARY: The Water Protection Bureau is proposing new rules to replace the existing criteria for nonsignificance determinations in ARM 17.30.716 with new criteria.

LIST OF AFFECTED RULES: This request to initiate rulemaking would amend ARM 17.30.716.

AFFECTED PARTIES SUMMARY: This rule could effect persons who propose to subdivide land if that subdivision includes subsurface wastewater treatment systems (i.e. septic systems) that serve one or two single-family homes or a non-industrial commercial system that is designed to discharge 700 gallons per day or less.

SCOPE OF PROPOSED PROCEEDING: The Department is requesting initiation of rulemaking and appointment of a hearing officer for a public hearing.

BACKGROUND: In 1998 The Board of Environmental Review approved new criteria for determining nonsignificance for domestic subsurface wastewater treatment systems (SWTS) in the nondegradation rules (ARM 17.30.716). That rule revision was an attempt to simplify the nonsignificance determination procedure for SWTSs in situations where there was little or no probability that an SWTS would degrade high quality state waters. After these rules were implemented it became clear that the new criteria were too stringent. Compared to the total number of SWTS that were determined nonsignificant since that rule was adopted, the number of SWTS that met the criteria in ARM 17.30.716 was very small.

In 2000, the Department made a commitment to the Montana Consensus Council to examine the current method used to determine nonsignificance for domestic SWTSs, and to simplify the process while still complying with the requirements in 75-5-303(5), MCA to prevent degradation. The Department's internal nondegradation core team was tasked with addressing this issue. The core team decided that the best method to meet the commitment made to the Consensus Council was to revise the existing criteria in ARM 17.30.716. After the core team prepared the initial rule, the Subdivision Task Force made additional revisions to prepare the current version of the rule.

The proposed rule addresses the issue by modifying some of the criteria in the current rule, and by including some completely new criteria. New criteria include using county-specific subdivision growth history, and using advanced treatment to reduce the information requirements needed to demonstrate nonsignificant degradation. In most cases, the proposed criteria apply to small and large subdivisions, the existing criteria only apply to subdivisions with 5 or less lots.

The proposed rule was presented to WPCAC on May 8, 2003. WPCAC determined that the rules

were acceptable to present to the Board.

HEARING INFORMATION: The Department believes it is appropriate for the Board to appoint a hearings officer to conduct the hearing.

BOARD OPTIONS: The Board may:

1. Initiate rulemaking, appoint a hearing officer, and schedule a hearing;
2. Determine that the adoption of rules is not appropriate and decline to initiate rulemaking; or
3. Direct the Department to modify the rulemaking and proceed.

DEQ RECOMMENDATION: The Department recommends initiation of rulemaking and appointment of a hearing officer for a public hearing.

ENCLOSURES: Notice of Proposed rulemaking for ARM 17.30.716.